IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

GIACOMETTO RANCH INC., et al., **Plaintiffs,** vs. **DENBURY ONSHORE LLC, et al.,** **Defendants.**	**CV 16-145-BLG-SPW** **ORDER WITHDRAWING ORDER DISMISSING LAWRENCE GIACOMETTO**

On July 7, 2020, Plaintiffs Tom Giacometto, Robert Giacometto, and Giacometto Ranch, Inc., filed a notice pursuant to Federal Rule of Civil Procedure 25(a) that Lawrence Giacometto, an original plaintiff in the action, died on September 12, 2019. (Doc. 74.) They requested Lawrence's name be stricken from the action and dismissed without prejudice unless his estate timely applied to intervene under Rule 25.

On July 14, 2020, the Court issued an order dismissing Lawrence without prejudice, (Doc. 75), based on the Notice of Death. This order was premature. Rule 25(a)(1) provides,

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the

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motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Lawrence's successor or representative originally had 90 days after the Notice of Death, (Doc. 74), to file a motion for substitution before Rule 25(a)(1) required the Court to dismiss him.

The Court will provide 90 days from the date of this Order for any party or Lawrence Giacometto's successor or representative to file a motion for substitution. Accordingly,

IT IS HEREBY ORDERED:

1. The Order dismissing Lawrence Giacometto without prejudice under Rule 25 (Doc. 75) is **WITHDRAWN.**

2. Lawrence Giacometto's name shall be added back as a plaintiff in the above-captioned action.

3. Any party or Lawrence Giacometto's successor or representative may file a motion for substitution within 90 days of this Order.

The Clerk of Court shall notify the parties of this Order.

DATED the 29th day of July, 2020.

SUSAN P. WATTERS
U.S. DISTRICT JUDGE